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**Federal Communications Commission**  
**CG Docket No. 02-278**

## **Comments of Gerald Roylance on NAR's Position**

Initially, I did not understand the National Association of Realtors' position. Now I get it. They're cheap. Realtors do not want to buy the DNC list nor do they want to pay for a stamp.

Instead, they want the FCC to muddy the waters with confusing and unnecessary exceptions. Real estate transactions are high value. Realtors who want clients can either send them a letter or purchase a DNC list.

The National Association of Realtors (NAR) asks that the FCC label some residential telephones as business telephones<sup>1</sup>. NAR's purpose was unstated, and its logic was muddled. Joe Shields reply shows that courts have used a bright line test of a customer's residential telephone bill to decide the residential telephone issue<sup>2</sup>. NAR responded with the self-serving argument that it does not want an exception for all home-based businesses<sup>3</sup>, just residential telephones involved in For Sale By Owner (FSBO) real estate transactions<sup>4</sup>. NAR continues its campaign<sup>5</sup>.

NAR's argument uses the amount of the transaction rather than some clear legal theory. Would selling a motor home create a home-based business? How about a trailer? Does a sailboat that sleeps five count? If the amount of the transaction is the indicator, does selling a \$100,000 luxury car create a home-based business? The FCC should not trade clarity for confusion.

The particular situation NAR wants to exempt is a silly one. A homeowner puts her house on the market. A realtor sees an FSBO advertisement and calls the homeowner to sell the realtor's services. If the homeowner were on the national DNC list, that would be a violation. NAR does not want it to be a violation, but a little thought brings up some problems. First, the homeowner does not want any telemarketing calls – that's why she's on the list. Second, not just one, but every realtor in town would have a license to call her; they all want the commission. Third, she has already decided to sell her house without a realtor; the FSBO is a statement that she does not want a realtor now. She may change her mind later, but her wishes start out crystal clear: she does not want a realtor, and she does not want telemarketing calls. NAR not only wants to telephone her, but also NAR wants to convince her that her FSBO is wrong.

Any realtor can get around the do-not-call list issue by mailing the FSBO a letter seeking to represent her. Few houses are sold in any one area, so the postage will not be a big expense. With 80 million numbers on the national DNC list, the implication is a large percentage of FSBOs numbers are on the DNC list.

Finally, this issue should be beneath notice. The issue is too small and too narrow to warrant carving out an exception.

Make the realtors buy a stamp.

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<sup>1</sup> CG Docket No. 02-278, October 21, 2004, National Association of Realtors

<sup>2</sup> CG Docket No. 02-278, October 26, 2004, Joe Shields

<sup>3</sup> NAR's October 21, 2004 letter emphasized the FTC's statement that a DNC list would not apply to home-based businesses.

<sup>4</sup> CG Docket No. 02-278, November 5, 2004, National Association of Realtors

<sup>5</sup> GC Docket No. 02-278, Covington & Burling, January 12, 2005